

1
Last page of docket
SHDKT

PROCEEDINGS AND ORDERS

DATE: [10/12/94]

CASE NBR: [93109220] EOP

STATUS: [PENDING CONFERENCE]

SHORT TITLE: [Whitaker, In Re Fred]

VERSUS []

DATE DOCKETED: [052094]

PAGE: [01]

-----DATE-----NOTE-----PROCEEDINGS & ORDERS-----
1 May 20 1994 R Petition for writ of prohibition and motion for leave to
proceed in forma pauperis filed.
6 May 20 1994 D Motion of petitioner for leave to proceed in forma
pauperis filed.
3 Jun 23 1994 DISTRIBUTED. September 26, 1994 (Page 23)
5 Oct 3 1994 REDISTRIBUTED. October 7, 1994 (Page 28)
7 Oct 11 1994 Motion of petitioner for leave to proceed in forma
pauperis DENIED. Petitioner is allowed until November 1,
1994 within which to pay the docketing fee required by
Rule 38(a) and to submit a petition in compliance with
Rule 33 of the Rules of this Court. Dissenting opinion
by Justice Stevens. Opinion per curiam.

1/90

Fred A. Whitaker
872 69th Ave.
Oakland, Ca. 94621
510-569-1343

②
93-9220

ORIGINAL

PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS UNDER 28 USCA
1915

SUPREME COURT OF THE UNITED STATES

FRED A. WHITAKER PETITIONER & APPELLANT

CASE: S 037063 / A061678

MOTION TO PROCEED
IN FORMA PAUPERIS

VS

CALIFORNIA'S SUPREME COURT

RESPONDENT

STATE OF CALIFORNIA COURT OF APPEAL,
ALAMEDA'S SUPERIOR COURT AND LAKE MERRITT
LODGE & RESIDENCE
REAL PARTIES
IN INTEREST

RECEIVED

MAY 20 1994

OFFICE OF THE CLERK
SUPREME COURT, U.S.

I

PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS

1.0 Petitioner (Fred A. Whitaker) asks the Supreme Court of The United states to allow him to proceed in forma pauperis. Attached To this petition for a Writ of Certiorari/Mandate or Prohibition is a affidavit in support of motion For Leave To Proceed In Forma Pauperis.

1.01. Petitioner has previously been granted a right to proceed in Forma Pauperis In all State of California Appellate Court levels In This Case.

5/18/94

Fred A. Whitaker

Fred A. Whitaker

29 pp

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, FRED A. WHITAKER being first duly sworn, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes---- No-X-
a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary or wages per month which you received.

10/87 \$112.00 PER WEEK PARTIME

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other sources?

Yes---- No-X-

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? Yes ---- No-X-
a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes ---- No-X-

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons. NONE

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 5/18/94

1s/ Fred A. Whitaker

Fred A. Whitaker
872 69th ave.
Oakland, Ca. 94621
510-569-1343

Writ of Mandate/Prohibition or Certiorari
The United States Supreme Court

FRED A. WHITAKER APPELLANT

VS

CALIFORNIA'S SUPREME COURT
RESPONDENT

STATE OF CALIFORNIA COURT OF
APPEAL, ALAMEDA'S SUPERIOR COURT
LAKE MERRITT LODGE & RESIDENCE
REAL PARTIES IN INTEREST

Case# S037063 & A061678
WRIT OF MANDATE/PROHIBITION
AND OR WRIT OF CERTIORARI

PETITIONER BRINGS FORTH THIS WRIT OF MANDATE/PROHIBITION AND OR
WRIT OF CERTIORARI BEFORE THE UNITED STATES SUPREME COURT ENTITLED
IN RE FRED A. WHITAKER REGARDING A COURT ORDER AND ENTRY OF JUDGEMENT
ENTERED BY CALIFORNIA'S SUPREME COURT ON 2/2/94.

4/27/94

FRED A. WHITAKER

Fred A. Whitaker

(A) QUESTIONS FOR REVIEW:

(1) The Federal Constitutional Under The Due Process & Equal Protection Clauses Gurantees all Citizens the Right To A Fair Trial.

(2) Trial/Hearing Includes the Judicial Phase where The Court of Law Determines Legal Liability or Non Liability and Amount of damages in Civil Litigation as a Matter of Law.

(3) All Litigants have a limited Right To Review Judicial Misconduct in The determination of damages Under Due Process & Equal Protection Clauses of The Federal Constitution as a Right Guranteed By Litigant's Constitutional Right To A Fair Trial/Hearing.

(4) All Litigants have as a Legal right Under 'Due Process & Equal Protection Clause of Constitution that Lower Court of Law must rely on all Evidence Submitted Prior to and During One's Trial/Hearing in a determination a Court's Finding of Legal or Non legal liability of any defendant in Civil Litigation.

(5) All Courts Of Review must determine Whether Amount of damages are Legal based on all evidence on Court record Submitted To It in Appeal process under Due Process & Equal Protection clauses of Federal Constitution.

(6) All Courts of Review Under Due Process & Equal Protection Clause of Federal Constitution Is mandated To Determine If

(A) Legal Liability was Properly Determined by Court Finding and (B) Lower Court of Law properly made Court finding That Defendant Had Engaged In Acts Which Violated plaintiffs' Legal Rights.

(7) When Court of Law's determination of Damages is inconsistent and or Conflicting With Plaintiffs' Legal Rights litigant Has a Right Under Due Process & Equal Protection Under Federal Constitution To Review Legality of those damages As A matter of Law.

PETITIONER'S STATEMENT OF (A) HOW THIS WRIT WILL AID COURT'S APPELLATE JURISDICTION (B) EXCEPTIONAL CIRCUMSTANCES WARRANTED FOR COURT TO EXCERCISE IT'S DISCRETIONARY POWER (C) WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER COURT.

(A) HOW THIS WRIT WILL AID'S COURT APPELLATE JURISDICTION:

This Court has the ultimate responsability and authority to promote consistency, Harmoney, Uniformity and Equitable relief for all Individuals thru out The United States regarding the proper application of the Federal Constitution.

This case will help in the Court's Responsibility and Authority regarding it's ability To promote Consistency, Harmoney, Uniformity & Equitable Relief For All Individuals Thru out the United states regarding The proper application of the federal Constitution.

Currently there is a case entitled Honda Motor Co. V Oberg # 93-694. The issue raised before this Court in that case is What power under Due Process Clause must Appeals Courts have to review and set aside Punitive damages verdicts rendered by juries.

My case is raises same/similar legal issue regarding Whether a Court of Review has the Legal authority Under Due Process Clause has the authority To Review and set aside Compensatory damages (Zero amount awarded) Established In Lower Court of Law by a Judge.

Petitioner contents that The Appropriate issue for review in both my Case and Cited case is That Judicial Review of any damages be it Compensatory, Special and or Exemplary Damages must focus On the Judicial Process Itself and not On the Actual amount of Damages awarded.

Petitioner contents that damages are part of the judicial Process (Trial) and thus whether a Judge or Jury has Abused it's Discretionary Power must Focus on The Judicial Procedure that established The Amount of the award and not the award itself.

Damages be it Compensatory, Special and or Exemplary Damages arise only after a Court of Law has determined That a defendant has violated Plaintiff's Legal Rights as a Matter of Law and That party has been damaged by facts established in that particular case.

Petitioner contents that any Court of Appeals has the Legal authority & Responsibility To Review any Amount of Damages (Compensatory, Special & Exemplary) only under certain Circumstances: (A) Lower Court of Law "Factual determination" that defendant Violated Plaintiff's Legal Rights has No Basis in Law and or Fact or (B) The Lower Court's Determination Of Defendant's Actual Amount of Damages Awarded Plaintiff Conflicts with Legal Rights That Court Determined Plaintiff was entitled to.

A Prime example of The above Concept is that in my Case Judge In Lower Court of Law determined that Judgement was for Me and awarded Zero damages. I had brought a legal complaint against defendant alleging that defendant had (A) Charged Plaintiff and on Behalf of all Others Including General Public an Illegal tax from 1969 till 6/5/91 and (B) Defendant Charged Plaintiff individually and all others including General Public an Illegal tax Increase from 4% to 10% from 1975 till 6/5/91. The Illegal Tax was on each person that stayed overnight and on all individuals who stayed at defendants Hotel each day and on a monthly basis or straight 30 days residence at defendants Hotel.

Lower Court Judge's awarding Zero damages for plaintiff when Plaintiff was charged a \$2.00 illegal tax and fact that defendant charged an allegedly \$1 million dollars in illegal taxes from 1969 till 6/5/91 was in Conflict with plaintiffs Legal Rights. California's Code 17200 of the Business & Professional Code allowed individuals sue on their own behalf of any illegal act and on Behalf of the General Public and for a Preliminary, Permanent Injunction.

California's Code 17200 of the Business & professional Code also awarded as a matter of law triple the damages determined by Court. In my case I had \$2.00 illegal tax times triple damages was \$6.00 dollars. The fact that plaintiff had zero damages and no other plaintiffs including a named plaintiff named Cecilia Lester had no damages even thought named plaintiff paid at least an illegal monthly tax of approximately \$48 dollars per month for 1 year approximately was irrational and conflicting with plaintiffs Right To Damages and their Right To a Preliminary and or Permanent injunction.

Petitioner contents Juries and or Judges have the legal authority to determine amount of damages but that Lower Court of Law must abide by Party's Due Process of Law Rights which includes that Lower Court of Law must make a determination of whether defendant violated plaintiff's legal rights based on a Factual determination of facts and not legal liability based on facts and or law not determined by that Court.

Petitioner contents that by establishing a Legal standard that review of any damages must be based on fact that Judicial Process Under Due Process was denied in particular case before the court and not the amount of damages.

Petitioner Contents that where a State has a Judicial Process that denies Review of the Judicial Process in determining damages damages that in and of itself is unconstitutional not the amount of damages per say.

All Litigants must have a Right To Review whether The Judicial process that Determined Liability of defendant was not an Abuse of Court's Discretionary Power and Whether actual damages awarded are Consistent with Plaintiff's Legal Right To Those damages.

In my case Under State Code once liability has been provened plaintiff individually and on Behalf of General Public was entitled

to triple their damages. Thus when Lower Court awarded only damages to me and not anyone else and didn't triple damages and didn't award Preliminary and or permanent Injunction was a blunt violation of plaintiffs legal Rights thus making Review of Lower Court's awarding of damages appropriate under those circumstances.

This Court in This case & Honda Motor Co. V Oberg # 93-694 raises same/similar question regarding Court of review's authority to review damage awards. Petitioner contents that Due Process clause legal rights is only appropriate under Following Circumstances: (A) Lower Court of Law factual determination that defendant violated Plaintiff's Legal Rights has No Basis in Law and or facts and (B) The Lower Court of Law determination of defendant's actual amount of damages Award Conflicts with legal rights that Court had determined as a matter of Law.

Petitioner contents that To Focus on whether a State court has a Judicial process which (A) Fails to grant review of any award damages and or (B) Has no Review Process To Review For Violations of Due Process Rights of Litigants is a Violation of Litigants Constitutional Rights.

Petitioner contents that focusing on above process makes for better Utilization of Court's resources to promote Court efficiency and effectiveness. Thus promoting Uniformity, Harmony, Consistency and Equitable relief for all Individuals thru out the United States.

To allow review of damages based solely on amount of damages opens up A Judicial Can of worms. If review of damages is reviewable solely on amount of damages then if that principle is made law then every jail sentence can be challenged as not being long enough based on same principle as alleged in Honda Motor Co. V Oberg # 93-694. Thus could create a system of review that is Unbearable and uncontrollable.

Petitioner contents by making party that wants to Review award of damages as violating Petitioner's Due Process Clause Rights under Specific Conditions that will be more effective and efficient in establishing as A Legal principle Review of any damages Thus promoting Judicial Harmony, Uniformity, Consistency and Equitable Relief for all litigants.

EXCEPTIONAL CIRCUMSTANCES WARRANTED FOR COURT TO EXERCISE IT'S DISCRETIONARY POWER:
California's Judicial Process Thru It's Court of Appeals had An Inadequate Procedure to Insure that Appellants Due Process Rights Under Federal Constitution and a Right To A Fair trial were protected regarding Amount of damages awarded in Civil litigation. In fact California's Judicial Procedure to Insure Due Process of Law Protection for all parties regarding awarding damages is such a deviation from normal Judicial Proceedings as to be outside the norm for protection of litigants constitutional Right to A Fair Trial regarding Awarding of damages.

California's Judicial Court of Appeal has no procedure To provide guidance and structure for all Courts of Law and Court's of review in The determination of Litigations Legal rights and whether they have been violated as a basis for awarding damages.

In My case Petitioner raised legal issue that Oakland's Transit Occupancy tax was Illegal under CCP#526A, 527 (CT# 437-458, 738-739). Petitioner raised legal issue that Oakland's Transit Occupancy tax was Prempted by State Government Code 51030 (CT#2, 219-213, 452-454, 738-739). Petitioner raised legal issue that Oakland's Occupancy Tax Tax increases from 4% to 10% after 1978 was a violation of Proposition#13A (Ct#738-739 etc) .Petitioner also raised other illegal acts by defendant in various papers filed in lower court.

California's Court of Review had no guidance that to review Appropriateness of damages it had to determine if plaintiff legal Rights were violated by defendant. Thus California's Court of appeal's

failure to make an independant determination whether plaintiffs legal rights were violated was such a deviation from normal and rational Due process of law as to warrant this court's discretionary power to insure Consistency,Harmony,Uniformity and equitable relief for plaintiffs.

California's Court of Review of whether lower Court's damages was adequate used as a standard of Review that Oral record of Hearing on damages was sole basis of evidence to determine adequacy of damages awarded in lower court.California's Court of review relied upon Tetra Pak,inc V State BD of Equalization 1991 234 Cal.App.3d 1751-1758.Tetra Pak,Inc pertained to fact that evidence (bench books) that were not made part of court record on appeal thus the appellate court could not in absence of the those records entirely eliminate that the lower court acted in a manner that was an abuse of it's discretion because lack of relevant court records for it's review.

Plaintiff's case had no relevancy to case cited above.Petitioner presented evidence (CT# 1-737 & ct# 738-743) which included (A) Motion For Summary Judgement and Adjudication of legal Issues filed on 10/2/91 (CT#468-472) (B) Separte Statement of Undisputed Material facts filed 10/2/91 (CT#474-570) (C) Declaration in Support of Motion For Summary Judgement filed 10/2/91 (CT# 571-572) (D) Memorandum of points & Authorities in Support of Motion for Summary Adjudication of issues filed 10/2/91 (CT#574-578) (E) Declaration under CCP#1013 in support of summary judgement of legal issues (CT#580-581) (F) Petitioners' legal position regarding summary adjudication of legality of defendants TOT Ordinances (CT#583-585) (G) Petitioner had various other legal documents made available to lower Court as evidence to support plaintiffs' Petition for Motion For default Judgement (CT#1-743).

Court of Review in it's review whether damages awarded in lower court was adequately never reviewed written documents provide to lower court prior to default hearing and made part of court

record (CT#1-737) and written documents present at default hearing by petitioner (CT#738-743) was a deviation from accepted normal judicial procedures.

The fact that The State of California's Court of Appeal had inadequate procedures to determine whether Lower Court of Law amount of damages had legal and factual basis based on the written and or oral record on appeal was such a deviation from established normal procedures as to Create an Judicial process that lacked adequate procedures to insure that damages that are proper reviewable in a manner to protect all litigants Due Process Legal Rights.

To ensure that all litigants within the state of California have a Right to have their damages reviewed in Civil Litigation that provides them with Proper Due Process Procedures this court must provide A Writ of Mandate and or Writ of Prohibition To California's Supreme Court as a matter of law.

(C) WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER COURT: The Judgement entered was in California's State Court and it was California's Court of Review that engaged in improper standard of Review thus that court decision was none reviewable by any Federal Court.As a result only This Court has legal authority and responsability to relief decision made in California's Court of Appeal that California's Supreme Court refused to review.

This Court by granting Writ of Mandate/Writ of Prohibition can excercise it's authority to force The State of California's Supreme Court and it's Court of Appeal to Review petitioner's case under conditions and standards imposed by it.

No other judicial body at this time has the legal authority to review petitioner's Writ of mandate/Writ of Prohibition and or Writ of Certiorari at this point in time.

(B) List of Parties: Lake Merritt Lodge & Residence defendant.

(C) TABLE OF CONTENTS i-iiii

(D) NA

(E) Consist Statement On Grounds Jurisdiction Of The United States Supreme Court is Invoked In This Case: This Writ of Certiorari, Writ of Mandate/Prohibition is invoked by Rule 28 USCA 1651(A) and rule 2254 which confers a legal right upon this court to hear this case.

(F) Constitutional Provisions This Case Involves: This Writ of Certiorari, Writ of Mandate/Prohibition involves Following Constitutional Rights : (A) The Right To A Fair Trial Under 14th and 5th amendments To The Federal Constitution regarding Amount of Actual damages determined by Lower Court of Law and (B) Court of Appeals Violated 11th amendment by acting in Excess of Their Jurisdictional Powers by Failing To Follow mandated Statutory damages as a Matter of Law upon all Plaintiffs including Petitioner.

(G) A CONSIST STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED:

BACKGROUND FACTS: Petitioner in Lower Court of Law brought forth a legal complaint for Summary Judgement and Adjudication of legal issues. Petitioner filed various legal documents with lower Court. Defendant never responded to petitioner's Summary Judgement & Adjudication of legal issues.

Petitioner filed a request for default Judgement. Prior made part of Court record for default (1) Motion For Summary Judgement and Adjudication of legal issues filed on 10/2/91 (CT#468-472) (2) Separate statement of undisputed material facts filed on 10/2/91 (CT# 474-570) (3) Declaration in support of motion for summary judgement filed on 10/2/91 (CT#571-572) (4) Memorandum of Points and Authorities in support of Motion for Summary Adjudication of issues filed 10/2/91 (CT#574-578) (5) Declaration in support

of summary judgement of legal issues (CT#580-581) (6) Petitioner's legal position regarding Summary Adjudication of legality of defendants TOT ordinances (CT#583-585) In all Petitioner prior to default Hearing Made available Written Evidence available to lower Court of Law (CT# 1-737) and at the Default hearing written Evidence CT#738-743 was made available to lower Court and made part of Court record.

In California's Court of Law in this Case The Presiding Judge decision/verdict and Entry of Judgement was That "judgement in favor of plaintiff Fred A. Whitaker and against Defendant Lake Merritt Lodge and Residence in the sum of Zero".

Petitioner Filed an Opening Appeal Raising Following Legal Issues: (A) Lower Court had No Legal grounds To Dismiss plaintiff Cecilia Lester from this legal complaint (B) Lower Court verdict & Judgement That Appellant (Mr. Whitaker) was entitled to judgement Against defendant in The Amount of Zero Dollars (CT#743) was not supported by Court Record and that Court verdict was a Violation of Appellant's Due Process & Equal Protection of the law as An Abuse of court's Discretionary Power (C) Lower Court Had a Legal Duty of Care To adhere to stare Decisis Court Ruling relevant To Legal Issues before the Court. Lower Court Judge's failure To adhere to stare Decisis Court ruling denied petitioner a Right To A fair Trial a denial of appellant's Right to Due Process & equal Protection Rights and (D) Appellant brought forth various legal issues before the lower court including declaratory relief (CT#433-436 & 437-449). Lower Court judge's failure to review and consider all appellants' legal issues before the court denied appellant a Right To A fair Trial & Access To The judicial Process Under Equal protection of the law.

The Court of Appeal in it's Opinion indicated that since petitioner was not aggrieved by such ruling plaintiff (Fred A. Whitaker) had no legal basis to challenge that dismissal. The Court of Appeal stated that whether zero damages was an abuse of court's discretion

without a record of oral testimony plaintiff would not be able to surmount the presumption that missing record would support the decision citing Tetra Pak, Inc. V State Board of Equalization 234 Cal.App.3d 1751-1758. Court of Appeal Stated that whether lower court Judge failed to adhere to stare decisis Court ruling was an abuse of it's discretionary power plaintiff neither cites nor discuss any judicial decisions addressing these ordinances which he does not describe ... thus plaintiff could not demonstrate that lower court judge ignored binding authority on the precise issues before her thus defying stare decisis.

Petitioner then filed a Petition For Review/Rehearing addressing issues cited in Court's opinion. Petitioner had brought Legal complaint Under Business & Professional Code 17200 and on Behalf of General Public of which Cecilia Lester was a member and Plaintiff. For Lower Court to disregard Cecilia Lester as a Plaintiff that was damaged and to disregard all other plaintiffs as well raised inference that Lower Court Judge failed to make a Legal determination of Plaintiffs' legal Rights and damages pertaining to Plaintiffs' Request for Preliminary and Permanent request for injunction and restitution under Business & Professional code 17200 that all plaintiffs were entitled to. This raised an inference that not only other plaintiff's rights were disregarded by Lower Court judge but Plaintiff's Legal rights as well.

Petitioner in his Petition for rehearing made Court of appeal aware that Petitioner had submitted written evidence (CT# 1-737)

Prior to Hearing on Default for Damages and additional written evidence during Hearing on Damages For default (CT#738-743) which was made part of court record on appeal. Petitioner Made Court of Appeal aware that the written evidence (CT#1-743) made part of record on appeal that the Amount of damages awarded by Lower Court was irrational and illegal as a matter of law and that it conflicted with Lower Court's Ruling. If Judgement was for Plaintiff and plaintiff was charged an illegal tax of \$2.00 and Business

at least would be \$6.00 dollars and all other plaintiffs would be entitled to amount of illegal tax charged them from 1969 till Date of Complaint (6/5/91).

Petitioner made Court of appeal aware in his petition for rehearing and Review that Petitioner had raised constitutionality of oakland's Transit Occupancy tax in various legal papers submitted to that court (CT# 1-39,43-46,52-53,118,212-216 ... etc). Petitioner also made court of appeal aware that In Britt V City of Pomona in 8/90 Court of appeal Ruling (Paragraph 2.01 opening appeal) stated Transit Occupancy Tax was illegal.

Petitioner indicated in his Petition for review/rehearing that Apellant had made lower Court aware that Transit Occupancy Tax was Illegal (CT# 2,35-39,148,152-208,217-226 ...etc). Petitioner also indicated that Lower Court was made aware that Oakland's Transient Occupancy Tax was a special tax (CT#474) and that law it had to be passed by 2/3 vote in a special election which oakland never engaged in CT#474. Thus oakland's Transient Occupancy Tax itself was illegal. The fact that all Transient Occupancy Tax increases were never confirmed by 2/3 vote of registered voters as required by law made it illegal (CT#475-477).

Petitioner indicated that because the lower Court failed to adhere To Appellate Court Ruling which declared Transit Occupancy Tax Illegal (CT#2,9,etc) was an Abuse of it's discretionary power by failing to follow Stare decisis Court Ruling.

Petitioner in his Petition for review/Rehearing made Court of appeal aware that Lower Court had not Reviewed all relevant legal issues. Petitioner's opening appeal stated That Lower Court challenged that Oakland's Occupancy tax violated CCP#526 &527 (CT#2). Oakland's Transient Occupancy tax violated Revenue Code 7280 (CT#2 etc) and Government Code 51030 (CT#43,219-223). Petitioner made Court of appeal aware that Government Code 51030 (CT#303) & Revenue & Taxation Code 7280 (CT#300&301) Preempted Oakland's Transient

Tax.

Petitioner in his petition for review/rehearing made court of appeal aware that The case it relied upon Tetra Pak, Inc. V State BD. of Equalization as cited by that Court was irrelevant case. That case was where court of appeals reviewed whether a taxpayer failed to establish that the trial court erred in denying request for attorney fees. In that case the taxpayer failed to produce evidence admitted at trial consisting of bench marks as part of record on appeal. Thus in absence of total record the possibility could not be entirely eliminated and consequently there was no showing of abuse.

Petitioner case was entirely different from case cited by Court of appeal. Lower Court's damages of zero was being challenged as being illegal. Petitioner filed written evidence CT#1-737 made part of court record and written evidence submitted at hearing CT# 738-743 which indicated that (A) Plaintiff was entitled as a matter of law for damages which court stated in it's Judgement and (B) amount of actual damages of zero was irrational and illogical given plaintiff was entitled to \$2.00 damages for illegal tax at triple the damages came to \$6.00. Thus zero damages was irrational and illogical given Plaintiffs' legal Right Under Business & Professional code 17200. The fact that no damages was awarded on behalf of General Public for illegal Tax from 1969 till date of complaint (6/5/91) when evidence that Cecilia Lester and others were illegally charged A monthly amount of \$48.00 dollars during 1991 raised an inference that Lower Court damages violated plaintiffs Right to a fair Trial.

Petitioner then filed a Writ of Mandate/Prohibition To California's Supreme Court raising issue that Court of Appeal had a Duty To Determine if Government Code 51030 & Revenue & Taxation Code 7280 as a matter of Law Preempted any Cities Transit Occupancy tax. This issue of State wide importance was not reviewed.

Petitioner in his Supreme Court Writ also raised legal issue That because California's Court of Review failed To Review Lower Court Ruling based on all Existing Evidence Submitted by Petitioner Prior, During and prior to Lower Court's Judgement it Abused It's Discretionary Powers. This was not Reviewed by California's Supreme Court.

Petitioner in his Writ before California's Supreme Court raised legal issue that Court of Appeal had a legal duty to Determine Whether California's Proposition 13A made Oakland's Transient Occupancy Tax increases from 1978 till Date of Plaintiffs complaint (6/5/91) was legal. This was not Reviewed by California's Supreme Court.

As a result this Writ of Mandate/Prohibition and Writ of Certiorari was Brought before this Court.

(H) HOW THE FEDERAL ISSUES WERE RAISED IN THE LOWER COURT OF APPEALS RULING.

Petitioner in Lower Court of Appeal raised legal issue Lower Court's awarding Zero damages that was not supported by Court record and lower Court's verdict/Judgement was a Violation of Appellant's Due process & equal Protection of Law was an Abuse of court's Discretionary Powers. Petitioner in Lower Court of Appeal also raised legal issue That Court of Law Judge had a legal duty to Adhere To Stare decisis Court ruling Relevant To Legal Issues before the Court and that Court's failure to adhere to stare Decisis Court Ruling denied Petitioner a Right to A fair trial a denial of appellants right to Due Process & equal Protection Rights An Abuse of Court's Discretion. Petitioner also raised Legal issue before The Court of Appeal that Lower Court's Failure To Review and consider all appellants legal issues before that Court denied All Appellants a Right To a fair Trial & Access to the judicial process Under Equal Protection of the Law.

The same similarly legal issues were raised in California's Supreme Court but were never reviewed by that Judicial Body.

THE FOLLOWING ARE THE LIMITED SPECIFIC CONDITIONS THAT A LITIGANT HAS RIGHT TO REVIEW WHETHER JUDICIAL PROCESS THAT DETERMINED AMOUNT OF DAMAGES FOR OR AGAINST LITIGANT WAS DONE IN A MANNER THAT DENIED THAT LITIGANT A RIGHT TO A FAIR TRIAL/HEARING:

(1) Where Court of Law Judge or Jury Fails To make a factual determination of Factual and or Legal Basis or Non Legal Basis of Defendant's Liability is An Act of Judicial Misconduct. An Abuse of Court's Discretionary Power. I.E. In my case petitioner had various different causes of actions (at least four) against Defendant. The Court of Law failed to Specify Which Causes of action defendant had legal Liability and which causes of action were Non-Liability against defendant. Thus when lower court Judge awarded Judgement For Petitioner (Fred A. Whitaker) against Defendant with Zero Damages there is no way that Court from Court record that What Liability was imposed upon defendant as a matter and law such that what damages Petitioner could obtain as a matter of law cannot be ascertained by that Judicial process.

PETITIONER CONTENTS AS A PRINCIPLE OF LAW WHERE THERE IS MORE THAN ONE CAUSE OF ACTION AGAINST ANY DEFENDANT COURT MUST SPECIFY THE BASIS OR NON BASIS OF LEGAL LIABILITY FOR EACH PARTICULAR CAUSE OF ACTION SUCH THAT THE COURT RECORD REFLECTS THAT A FACTUAL DETERMINATION HAS BEEN MADE BY JUDICIAL PROCESS TO ESTABLISH LEGAL OR NON LEGAL LIABILITY AS A DETERMINATION OF DAMAGES THAT PREVAILING PARTY IS ENTITLED TO AS A MATTER OF LAW.

In Petitioner's case petitioner raised legal issue that Defendant was Illegally applying Oakland's transient Occupancy Tax (4%) as a Matter of Law from 1969 till Date of complaint as of (6/5/91). Petitioner also raised legal issue that Oakland's Transient Occupancy Tax Increases from 4% to 10% after 1978 till 6/5/91 was Illegal Thus Defendant was illegally overcharging plaintiffs with illegal tax increases. Petitioner raised legal issue that defendant's business practice to charge plaintiffs at \$11.00 daily rate for shared rooms and other with same shared room \$9.75 was illegal under CC#51 (CT#48). Petitioner raised legal issue that defendant violated Oakland's Municipal Code Sec. 3-22-01 (CT#51) etc.

It is clear that Lower Court's Verdict/Judgement that Judgement For Petitioner is legally insufficient to determine what exact legal liability that defendant was accountable as a matter of law. Thus Whether damages was appropriate cannot be determined by Lower Court record as a matter of Law.

(I) PETITIONER SEEKS REVIEW OF THE JUDGEMENT OF CALIFORNIA'S SUPREME COURT DENYING PETITIONER'S PETITION FOR REVIEW DENIED ON FEBURARY 2, 1994.

Petitioner's right to have this court Review this case comes under Rule 28 USCA § 1651(A) and rule 2254 which confers a legal right upon this Court to Hear this Case.

(J) DIRECT AND CONCISE ARGUMENT AMPIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THIS WRIT:

Currently before this Court is The Honda Motor Co. V Oberg # 93-644. The issue before this Court in that case is What power, under The Due Process Clause must Appeals Courts Have to review and set aside punitive damages verdicts rendered by juries.

This case raises similar issue . Petitioner contents that Whether Damages are Awarded by Judge or Jury Those Damages Are Part of Judicial Process (Trial /Hearing). Petitioner Contents that Under Petitioner's Right To A Fair Trial Guranteed By The Due Process & Equal Protection Amendments To The Federal Constitution Gurantee Petitioner a Right To Review whether Any Court of Law engaged in Judicial Misconduct that Denied that Litigant A Right To A Fair Trial Including damages.

Petitioner contents that A Civil Trial consist of Determination of legal liability or Non-Liability and Damages that Arise because of that Legal or Non Legal Liability as determined by Jury and or Judge.

THE LEGAL ISSUE IS NOT WHETHER A PARTY HAS A RIGHT TO REVIEW WHETHER DAMGES BE IT PUNITIVE, EXEMPLARY, COMPENSATORY AND OR SPECIAL DAMAGES IS EXCESSIVE BUT WHETHER THE JUDICIAL PROCESS THAT DETERMINED THOSE DAMAGES DENIED PETITIONER A RIGHT TO A FAIR TRIAL.

Petitioner contents that all litigants have a Limited Right To Review Judicial Misconduct in The determination of Damages Under The Due Process and Equal Protection Amendments To The Federal Constitution as A Right Guranteed By Litigant's Constitutional Right To A Fair Trial.

The Right of a party To A finding is a Right To Express Finding on all Material issues raised by Pleading. The issue of Legal or Non Legal Liability is a material issue of Law. The failure to find on material issues ordinarily amounts to reversible error. FAILURE TO OBJECT TO LACK OF MATERIAL FINDING DOES NOT WAIVE A PARTY'S Right to those material Finding See San Jose Abstract & Title Co. V Elliot 1952 108 CA2d 703. A defective finding is Equalevent to failure to find. See King V Gustason 101 CA 59,61.

Thus it is clear that lower Court's failure to make a material factual determination regarding legal basis or non legal basis of each cause of action against defendant was a failure to express finding on material issues raised by pleading.

(2) The Second Specific Condition That Allows All Litigants A Right For Review of Damages is when Lower Court of Law Fails to Review all "Evidence" (written, oral etc) in it's making a Finding of Legal Liability or Non-liability of any defendant.

In Petitioner's Case written evidence was submitted prior to Hearing for damages (CT#1-737) & During The Hearing (CT#738-743). California's Court of Appeal standard of Review that No Oral testimony was available thus whether damages were appropriate could not be challenged.

California's Court of appeal standard of review is illegal and irrational. The issue is whether there was any evidence before the Court of Law and made part of court record that "Established that Lower Court's damage amount was Improper. Petitioner made part of Court record on Appeal Written Evidence (CT#1-743) that lower Court's damages amount was done in a manner that denied Petitioner a fair Trial.

It is Petitioner's contention that Lower Court must rely on all evidence submitted prior to and during the Trial/Hearing as a basis for determining legal liability or Non-Liability of defendant.

It is the Court of Law's responsibility To determine what the Law is by a factual determination. Whether defendant engaged in any activity that violated plaintiffs' legal rights is a factual determination of all evidence submitted to that judicial body.

Thus in Petitioner's case it was Court's duty To determine Whether Oakland's Transient Occupancy Tax was illegal as a matter of Law and whether All Tax Increases after 1978 pertaining To Oakland's transient Occupancy tax was Illegal. Lower Court had a Duty to determine from all evidence submitted to it whether defendant applied Illegal Oakland's Transient Occupancy tax and illegal Tax increases of that tax after 1978 against plaintiffs.

Lower Court of Law's failure to make factual determination of What was The Law and whether defendant violated plaintiffs' legal rights. Lower Court of Law's failure To make a factual determination on material issue of (1) What was Legal Law and (2) whether defendant engaged in illegal acts against petitioner based on all evidence submitted by Petitioners was a denial of Petitioner's Right To a Fair Trial . Thus The amount of damages were reviewable as a matter of Law Under 5th and 14th amendments To The Consitution.

THUS AS A PRINCIPLE OF LAW ALL LOWER COURTS OF LAW MUST MAKE A DETERMINATION THAT (A) WHAT THE LAW IS (B) WHETHER DEFENDANT HAD ENGAGED IN ILLEGAL LAW AGAINST PETITIONERS AND (C) COURT OF LAW MUST RELY ON ALL EVIDENCE SUBMITTED TO THAT JUDICIAL BODY PRIOR TO AND DURING THE HEARING/TRIAL TO MAKE DETERMINATIONS OF (A) AND (B) AFORE MENTIONED IN THIS PARAGRAPH.

(3) The Third Specific Circumstance that Petitioner's have A Legal Right to Review Legality of amount of damages is When The Actual Damages awarded by Judge or Jury is inconsistent and or Conflicting with The Petitioner's Legal Rights determined by Law.

In my particular case The Lower Court of law Judge determined that judgement was for plaintiff (Fred A. Whitaker) and Against Defendant for Zero Damages. The determination of Petitioner's Legal Rights and Amount of actual damages is conflicting, irrational and an outright farce. Lower Court of Law determined that Judgement

was for Petitioner without specifying which Legal Rights he was entitled to. Since Legal complaint stated that defendant was applying illegal Tax upon petitioners. Since Petitioner was Charged an illegal tax (\$2.00) and the Law (Business & Professional Code 17200) allowed triple damages as a matter of law. Petitioner's damages as a legal right was \$6.00.

The fact that petitioner brought lawsuit on behalf of general public for time period 1969 till 6/5/91 against defendant and damages range from \$2.00 for overnight tax to \$48.00 monthly illegal tax the Zero damages for petitioner and no determination of damages on General Public from 1969 till 6/5/91 is inconsistent with the law irrational and conflicts with petitioners legal rights as a matter of law.

BENEFITS OF THIS WRIT TO THIS COURT:

(A) This Writ promotes Judicial Efficiency and effectiveness By Focusing in on Specific Circumstances that Any Damages are Reviewable as a Matter of Law. This promotes Consistency, harmony and equitable relief which is in best Interest of Society as a Whole.

(B) This Writ by addressing Issue of What Judicial Process is considered Acts of judicial misconduct that Denies a particular litigant A Right To a fair Trial/Hearing establishes Principles Of Law such That All Judicial Courts of Review and Law can be guided on How Damages should be determined. This hopefully will assist Courts of Law in properly determining appropriate damage amount thus making judicial process more *EFFECTIVE* and efficient over the long and short run.

(C) This Writ by focusing on the judicial process which as the basis of Error for amount of damages and not the amount retains the Judicial process as the basis for Judicial Review and not The outcome of the judicial process (amount of damages) as basis for Review of Amount of damages.

For This Court to allow Punitive or any other damages to be reviewable because of their amount would be an unsound principle

of Law. If Punitive damages are reviewable because of the size of damages then if that principle is extended to all damage awards if could be logically extended that damages either too low or not enough should also be reviewable. It would be an outrage if Punitive damages are reviewable because of their size and compensatory and special damages could not be reviewable because of their size. The fact that same principle is involved for all types of damages makes review of damages based on size a pandora's box for all courts of law and or review

Petitioner contents that bit would be a bad case precedent to allow damages as a principle of law to be reviewable based on their size. This would create a Judicial Nightmare and take juries decisioning making process and make it fair game for any litigant. Justice would not be based on Whether a litigant's Legal Rights had been violated but that a litigant's subjective determination that the award was "too Big or too Small or not enough". This could create chaos with Courts of review which would not be in the best interest of society as a whole.

I Fred A. Whitaker declare that the statements aforementioned are true and correct under the penalty of perjury as executed in Oakland, California on 4/27/94.

4/27/94

Fred A. Whitaker

Fred A. Whitaker

APPENDIX:

(1) CALIFORNIA'S SUPREME COURT ORDER & ENTRY OF JUDGEMENT FILED
ON 2/2/94.

(2) CALIFORNIA'S COURT OF APPEAL'S OPINION

(3) CALIFORNIA'S SUPERIOR COURT ORDER & ENTRY OF JUDGEMENT

First Appellate District, Division Four, No. A061678
S037063

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

FRED A. WHITAKER, Appellant

v.

LAKE MERRITT LODGE & RESIDENCE, Respondent

SUPREME COURT
FILED

FEB - 2 1994

Robert Wandruff Clerk

DEPUTY

Appellant's petition for review DENIED.

LUCAS

Chief Justice

NOT TO BE PUBLISHED
IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

FILED

NOV 23 1993

Court of Appeal - First Dist.
RON D. GARNOW, CLERK

FRED A. WHITAKER,

Plaintiff and Appellant,

v.

LAKE MERRITT LODGE & RESIDENCE,

Defendant and Respondent.

A061678

(Alameda Super. Ct.
No. 6815947)

BY THE COURT:*

Plaintiff Fred A. Whitaker purports to appeal from "Judge Girard's entry of judgement [sic] on 3/16/93 in Dept. 18." The record on appeal consists solely of a clerk's transcript. The only thing in it dated March 16, 1993, is a minute order reciting the "Court's Decision on Submitted Matter" to the effect that "Judgment in favor of plaintiff Fred Whitaker and against defendant Lake Merritt Lodge and Residence in the sum of zero [dollars]." Further perusal of the record discloses that the matter submitted to Judge Girard was an "Uncontested Hearing - Default" at which plaintiff was "present, sworn and examined."

The record on appeal does not include an actual judgment entered in the permanent records of the trial court. Inquiry from

* Before Anderson, P.J., Poché, J. and Reardon, J.

this court to the clerk of the trial court revealed that there is no final judgment, nor was the minute order entered as a judgment. The minute order cannot suffice for a judgment, without which plaintiff cannot properly invoke the reviewing jurisdiction of this court. (See 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, §§ 90-91, pp. 111-112.)

Even were this defect not present, it is clear that plaintiff could not prevail on the merits.

Plaintiff's "Legal Issue Number One" is stated to be that "Judge Girard abused her discretionary powers by illegally dismissing plaintiff Cecilia Lester from this legal complaint." Plaintiff would not be able to challenge the dismissal of a coplaintiff because he would not be aggrieved by such a ruling. (Code Civ. Proc., § 902; County of Alameda v. Carleson (1971) 5 Cal.3d 730, 736-737.)

Plaintiff's "Legal Issue Number Two" is stated to be that "Judge Girard's verdict and judgment that appellant (Mr. Whitaker) was entitled to zero damages was an abuse of her discretionary powers." As previously mentioned, Judge Girard's decision on damages was made after hearing testimony from plaintiff. Without a record of that testimony, however, plaintiff would not be able to surmount the presumption that the missing record would support the decision. (Tetra Pak, Inc. v. State Bd. of Equalization (1991) 234 Cal.App.3d 1751, 1758.)

Plaintiff's "Legal Issue Number Three" is stated to be that "Judge Girard['s] failure to adhere to stare decisis court

... ruling was an abuse of it's [sic] discretionary powers." It appears from his brief that plaintiff would attack the validity of taxation ordinances enacted by the cities of Oakland, Emeryville, and Hayward. However, plaintiff neither cites nor discusses any judicial decisions addressing these ordinances, which he does not describe. With so much missing, plaintiff could not demonstrate that Judge Girard ignored binding authority on the precise issues before her, thus defying stare decisis. (Evid. Code, § 664; Tetra Pak, Inc. v. State Bd. of Equalization, supra, 234 Cal.App.3d 1751 at p. 1758.)

Plaintiff's "Legal Issue Number Four" is stated to be the "Lower courts' failure to review all appellants legal issues was an abuse of its' [sic] discretionary powers." The ensuing discussion is so terse and conclusionary that no reviewing court would accept it as sufficient to rebut the statutory presumption that those judges complied with their official duties and obligations. (Evid. Code, § 664; Troensegaard v. Silvercrest Industries, Inc. (1985) 175 Cal.App.3d 218, 228.)

Our dismissal of this defective appeal spares plaintiff the possibility of being assessed frivolous appeal sanctions.

The purported appeal is dismissed.

PROOF OF SERVICE BY MAIL
UNDER CCP# 2015.5

I DECLARE THAT: I,
AM A CITIZEN OF THE UNITED STATES AND LIVE IN OAKLAND
CALIFORNIA; AND THAT I AM OVER THE AGE OF 18 YEARS OLD
AND THAT I AM NOT PARTY TO THIS LEGAL PROCEEDING AND THAT
MY HOME ADDRESS IS 872 69TH AVE IN OAKLAND, CALIFORNIA
94621.

THAT ON 4/28/94 I SERVED A TRUE COPY OF THE
ORIGINAL DOCUMENT

- 1) WRIT OF HABEAS CORPUS / PROHIBITION
WRIT OF CERTIORARI
- 2) MOTION FOR WRIT OF HABEAS CORPUS

BY DEPOSITING A TRUE COPY OF THE ORIGINAL THEREOF ENCLOSED
IN A SEALED ENVELOPE WITH POSTAGE THEREON FULLY PREPAID IN
THE UNITED STATES MAIL IN OAKLAND, CALIFORNIA
ADDRESSED AS FOLLOWS:

MR. RACKER
OR CURRENT MANAGER
LAKE MERRITT
1006 E RESIDENCE
2322 HARRISON ST
OAKLAND, CA. 94612

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT EXECUTED ON 4/28/94 IN OAKLAND
CALIFORNIA.

4/28/94

Fred White

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SUPREME COURT OF THE UNITED STATES

IN RE FRED WHITAKER

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 93-9220. Decided October 11, 1994

PER CURIAM.

Pro se petitioner Fred Whitaker filed a petition for writ of mandamus and requests permission to proceed *in forma pauperis* under this Court's Rule 39. Pursuant to Rule 39.8, we deny petitioner leave to proceed *in forma pauperis*.^{*} Petitioner is allowed until November 1, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit a petition for a writ of prohibition in compliance with Rule 33 of the Rules of this Court. For the reasons explained below, we also direct the Clerk of the Court not to accept any further petitions for extraordinary writs from petitioner in noncriminal matters unless he pays the docketing fee required by Rule 38(a) and submits his petition in compliance with Rule 33.

Since 1987, petitioner has filed 23 claims for relief, including 18 petitions for certiorari, 9 of which have been filed in the last three Terms. That total also includes five petitions for extraordinary writs filed since June 1992. We have denied all of the petitions without recorded dissent. We have also denied petitioner leave to proceed *in forma pauperis* pursuant to Rule 39.8 for the last two petitions in which he has sought extraordi-

^{*}Rule 39.8 provides: "If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ, as the case may be, is frivolous or malicious, the Court may deny a motion for leave to proceed *in forma pauperis*."

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nary relief. *In re Whitaker*, 511 U. S. ____ (1994); *In re Whitaker*, 506 U. S. ____ (1992).

Petitioner's current claim involves a civil action brought in the Alameda, California, Superior Court against Lake Merritt Lodge & Residence, alleging damages of \$2 in illegal taxes. His legal arguments here are just as frivolous as those he has made in previous petitions.

Although petitioner has exhibited frequent filing patterns with respect to petitions for writ of certiorari, we limit our sanctions at this time to the type of relief requested today—styled as petitions for extraordinary writs. We have imposed similar sanctions in the past. See, e.g., *In re Anderson*, 511 U. S. ____ (1994); *In re Demos*, 500 U. S. 16 (1991); *In re Sindram*, 498 U. S. 177 (1991); *In re McDonald*, 489 U. S. 180 (1989). As we concluded in *Sindram*:

"The goal of fairly dispensing justice . . . is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests. *Pro se* petitioners have a greater capacity than most to disrupt the fair allocation of judicial resources because they are not subject to the financial considerations—filing fees and attorney's fees—that deter other litigants from filing frivolous petitions. The risks of abuse are particularly acute with respect to applications for extraordinary relief, since such petitions are not subject to any time limitations and, theoretically, could be filed at any time without limitation. In order to prevent frivolous petitions for extraordinary relief from unsettling the fair administration of justice, the Court has a duty to deny *in forma pauperis* status to those individuals who have abused the system." 498 U. S., at 179–180 (citation omitted).

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SUPREME COURT OF THE UNITED STATES

IN RE FRED WHITAKER

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 93-9220. Decided October 11, 1994

JUSTICE STEVENS, dissenting.

Having already explained why the 1991 amendment to this Court's Rule 39 was both unnecessary and ill-considered,¹ and having dissented from each of the dispositions cited by the Court today,² I would only add that I remain convinced that the views expressed in those dissents are correct. Given the current state of our docket, there is a peculiar irony in the Court's reliance, as a basis for singling out this petition for special treatment, on the supposed need to conserve its scarce resources so that it may achieve its "goal of fairly dispensing justice," *ante*, at 2.

I respectfully dissent.

¹*In re Amendment to Rule 39*, 500 U. S. 13, 15 (1991) (dissenting opinion).

²See *In re Anderson*, 511 U. S. ___, __ (1994); *In re Demos*, 500 U. S. 16, 17-19 (1991); *In re Sindram*, 498 U. S. 177, 180-183 (1991); *In re McDonald*, 489 U. S. 180, 185-188 (1989). See also *Day v. Day*, 510 U. S. ___, __ (1993) (STEVENS, J., dissenting); *Talamini v. Allstate Ins. Co.*, 470 U. S. 1067, 1069-1072 (1985) (STEVENS, J., concurring).

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